

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

CLERK US DISTRICT COURT  
NORTHERN DIST. OF TX  
FILED

2019 JAN 17 PM 12:04

BRITTANY HENLEY

Plaintiff,

VS.

CIVIL ACTION 3:18-CV-1777-M

ABBESELOM GHERMAY, M.D.; and  
DALLAS BACK PAIN  
MANAGEMENT/MOMENTUM PAIN  
MANAGEMENT

Defendants.

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RETURN OF SERVICE

Came to my hand on Tuesday, January 15, 2019 at 11:45 AM,  
Executed at: 2377 NORTH STEMMONS FREEWAY, ROOM 502, DALLAS, TX 75207  
within the county of DALLAS at 1:55 PM, on Tuesday, January 15, 2019,  
by individually and personally delivering to the within named:

WENDY CHUNG, M.D.

a true copy of this

**SUBPOENA REQUIRING APPEARANCE AT DEPOSITION and DEFENDANTS  
ABBESELOM GHERMAY, M.D. AND DALLAS NEUROSURGICAL & SPINE, P.A. d/b/a  
MOMENTUM PAIN MANAGEMENT'S NOTICE OF INTENTION TO TAKE THE  
ORAL/VIDEOTAPED DEPOSITION OF DR. WENDY CHUNG WITH  
SUBPOENA DUCES TECUM with EXHIBIT A attached**

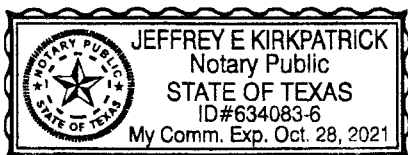
and tendered \$45.00 witness fee cash  
having first endorsed thereon the date of the delivery.

**BEFORE ME**, the undersigned authority, on this day personally appeared **Danny L. Haney** who after being duly sworn on oath states: "My name is **Danny L. Haney**. I am a person not less than eighteen (18) years of age and I am competent to make this oath. I am a resident of the State of Texas. I have personal knowledge of the facts and statements contained herein and aver that each is true and correct. I am not a party to nor related or affiliated with any party to this suit. I have no interest in the outcome of the suit. I have never been convicted of a felony or of a misdemeanor involving moral turpitude. I am familiar with the Texas Rules of Civil Procedure, and the Texas Civil Practice and Remedies Codes as they apply to service of process. I am certified by the Judicial Branch Certification Commission to deliver citations and other notices from any District, County and Justice Courts in and for the State of Texas in compliance with rule 103 and 501.2 of the TRCP.

By:

  
Danny L. Haney - PSC566 - Exp 03/31/20  
served@specialdelivery.com

Subscribed and Sworn to by Danny L. Haney, Before Me, the undersigned authority, on this  
16<sup>th</sup> day of January, 2019.



  
Notary Public in and for the State of Texas

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**BRITTANY HENLEY**

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**Plaintiff**

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**v.**

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**Civil Action 3:18-cv-1777-m**

**ABBESELOM GHERMAY, M.D.; and**

§

**DALLAS BACK PAIN**

§

**MANAGEMENT/MOMENTUM PAIN**

§

**MANAGEMENT**

§

§

**Defendants.**

§

**SUBPOENA REQUIRING APPEARANCE AT DEPOSITION**

**THE STATE OF TEXAS**

TO: Wendy Chung, M.D.  
Dallas County Health and Human Services  
2377 N Stemmons Fwy  
Dallas, TX 75207

Greetings:

YOU ARE COMMANDED to attend a deposition on January 29, 2019 at the following time and place: Southwestern Institute of Forensic Sciences at Dallas, 2355 N. Stemmons Freeway, Dallas, Texas 75207 beginning at 1p.m. and continuing from day to day until completion.

Respectfully submitted,

**THE FRALEY FIRM, AN OFFICE OF BEARD  
KULTGEN BROPHY BOSTWICK &  
DICKSON, PLLC**

901 Main St., Suite 6300

Dallas, Texas 75202

(214) 761-6460

(214) 761-6469 - Fax

By: /s/Laura Kugler  
LAURA ELLIS KUGLER  
State Bar No. 06571020  
[lkugler@fraley-law.com](mailto:lkugler@fraley-law.com)

**ATTORNEYS FOR DEFENDANTS  
ABBESELOM GHERMAY, M.D. AND  
DALLAS NUEROSURGICAL & SPINE, P.A.  
d/b/a MOMENTUM PAIN MANAGEMENT**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served on counsel of record this **14th** day of **January, 2019** by the method indicated below:

**VIA EMAIL**

Jim Girards  
Girards Law Firm  
10000 N. Central Expressway  
Suite 400  
Dallas, TX 75231

/s/Laura Kugler  
LAURA ELLIS KUGLER

**DUTIES OF PERSON SERVED WITH SUBPOENA**

You are advised that under TEXAS RULES OF CIVIL PROCEDURE 176.2(a) and 176.6(a), and CIVIL PRACTICE AND REMEDIES CODE §22.002, a person served with a subpoena has certain rights and obligations. Rule 176.6 provides:

- a) *Compliance required.* Except as provided in this subdivision, a person served with a subpoena must comply with the command stated in the subpoena unless discharged by the court or by the party summoning such witness. A person commanded to appear and give testimony must remain at the place of deposition, hearing, or trial from day to day until discharged by the court or by the party summoning the witness.
- b) *Organizations.* If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.
- c) *Production of documents or tangible things.* A person commanded to produce documents or tangible things need not appear in person at the time and place of production unless the person is also commanded to attend and give testimony, either in the same subpoena or a separate one. A person must produce documents as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand. A person may withhold material or information claimed to be privileged but must comply with Rule 193.3. A nonparty's production of a document authenticates the document for use against the nonparty to the same extent as a party's production of a document is authenticated for use against the party under Rule 193.7.
- d) *Objections.* A person commanded to produce and permit inspection and copying of designated documents and things may serve on the party requesting issuance of the subpoena--before the time specified for compliance -- written objections to producing any or all of the designated materials. A person need not comply with the part of a subpoena to which objection is made as provided in this paragraph unless ordered to do so by the court. The party requesting the subpoena may move for such an order at any time after an objection is made.
- e) *Protective orders.* A person commanded to appear at a deposition, hearing, or trial, or to produce and permit inspection and copying of designated documents and things may move for a protective order under Rule 192.6(b) -- before the time specified for compliance -- either in the court in which the action is pending or in a district court in the county where the subpoena was served. The person must serve the motion on all parties in accordance with Rule 21a. A person need not comply with the part of a subpoena from which protection is sought under this paragraph

unless ordered to do so by the court. The party requesting the subpoena may seek such an order at any time after the motion for protection is filed.

- f) *Trial Subpoenas.* A person commanded to attend and give testimony, or to produce documents or things, at a hearing or trial, may object or move for protective order before the court at the time and place specified for compliance, rather than under paragraphs (d) and (e).

**WARNING**

**FAILURE BY ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON THAT PERSON MAY BE DEEMED A CONTEMPT OF THE COURT FROM WHICH THE SUBPOENA IS ISSUED OR A DISTRICT COURT IN THE COUNTY IN WHICH THE SUBPOENA IS SERVED, AND MAY BE PUNISHED BY FINE OR CONFINEMENT, OR BOTH.**

This subpoena is issued at the request of Abbaselom Ghermay, M.D., a party to the above-described action, whose attorney of record is Laura Kugler.

Date of issuance: January 15, 2019

Subpoena issued by:

/s/Laura Kugler  
LAURA ELLIS KUGLER

**MEMORANDUM OF ACCEPTANCE OF SERVICE**

I, Wendy Chung, M.D., accepted service of this Subpoena Requiring Appearance at a hearing and received the witness fee on the \_\_\_\_ day of January, 2019.

\_\_\_\_\_  
Wendy Chung, M.D.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**BRITTANY HENLEY**

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**Plaintiff**

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**v.**

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**Civil Action 3:18-cv-1777-m**

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**ABBESELOM GHERMAY, M.D.; and**

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**DALLAS BACK PAIN**

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**MANAGEMENT/MOMENTUM PAIN**

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**MANAGEMENT**

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**Defendants.**

§

**DEFENDANTS ABBESELOM GHERMANY, M.D. AND DALLAS NEUROSURGICAL  
& SPINE, P.A. d/b/a MOMENTUM PAIN MANAGEMENT'S NOTICE OF INTENTION  
TO TAKE THE ORAL/VIDEOTAPED DEPOSITION OF DR. WENDY CHUNG  
WITH SUBPOENA DUCES TECUM**

To: Plaintiff Brittany Henley, by and through her counsel of record, Jim Girards, Girards Law Firm, 10000 N. Central Expressway, Suite 400, Dallas, Texas 75231.

Please take notice that on **Tuesday, January 29, 2019**, beginning at 1 p.m. and continuing from day to day until completion, the undersigned will take the oral/videotaped deposition of **WENDY CHUNG, M.D.** before a certified court reporter with Corona Court Reporting at the following location:

Southwestern Institute of Forensic Sciences at Dallas  
2355 N. Stemmons Freeway  
Dallas, Texas 75207

The witness is to produce at the deposition the items indicated in the attached **Exhibit A**, incorporated herein as if fully set forth. Please take notice pursuant to Rule 202 of the Texas Rules of Civil Procedure that this deposition may be taken by videotape.



Respectfully submitted,

**The Fraley Firm,**  
An office of Beard, Kultgen, Brophy, Bostwick &  
Dickson, PLLC  
901 Main St., Suite 6300  
Dallas, Texas 75202  
(214) 761-6460  
(214) 761-6469 - Fax

By: /s/ Elizabeth M. Fraley  
**ELIZABETH M. FRALEY**  
State Bar No. 13180500  
efraley@fraley-law.com  
**LAURA ELLIS KUGLER**  
State Bar No. 06571020  
lkugler@fraley-law.com

**ATTORNEYS FOR DEFENDANTS**  
**ABBESELOM GHERMAY, M.D. AND**  
**DALLAS NUEROSURGICAL & SPINE, P.A.**  
**d/b/a MOMENTUM PAIN MANAGEMENT**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent to counsel of record via the method indicated below on this the **14th** day of **January, 2019**:

**VIA EMAIL:**

Jim Girards  
Girards Law Firm  
10000 N. Central Expressway  
Suite 400  
Dallas, TX 75231

/s/ Laura E. Kugler  
Laura E. Kugler

**EXHIBIT A**

UNLESS AGREED OTHERWISE, YOU ARE INSTRUCTED TO BRING THE ORIGINALS OF SUCH DOCUMENTS IF THE ORIGINALS ARE IN YOUR POSSESSION, CUSTODY OR CONTROL, OR THE CONTROL OF YOUR AGENTS OR REPRESENTATIVES; AND YOU ARE FURTHER INSTRUCTED TO PRODUCE COPIES OF THE ORIGINALS ONLY IF SUCH ORIGINALS ARE NOT IN YOUR POSSESSION, CUSTODY OR CONTROL, OR THE COPY INCLUDES MARGINAL NOTES OR OTHER CHANGES NOT INCLUDED IN THE ORIGINALS.

As used herein, the term "records" includes all documents in the possession, custody or control of the witness to whom this request is directed, or their agents or representatives, and includes, but is not limited to, papers, memoranda, agreements, medical records, x-rays, test results, videotapes, contracts, writings, photographs, correspondence, accounts, drawings, graphs, charts, transcripts of telephone conversations or records thereof, certificates, licenses, permits, articles, journals, treatises, reports and/or any other data compilations from which the requested information can be obtained or translated.

**WENDY CHUNG, M.D.** is requested to produce the following records, if not already produced in discovery:

1. A copy of any witness statement given in this case;
2. Any and all documents reviewed by the witness prior to his/her deposition or any documents read to the witness by any other person or otherwise used to refresh the recollection about the occurrence or incident in question.
3. Any and all correspondence or other written or transcribed communications between the witness and Abbeselom Ghermay, M.D. and any individual at Dallas Neurosurgical & Spine, P.A.;
4. Any and all correspondence or other written or transcribed communications between the witness and any other individual regarding Brittany Henley
5. Any and all correspondence or other written communications between the witness and any other individual related to the fungal meningitis outbreak and cases of the infection in Texas and the handling of same.
6. A copy of your driver's license;